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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, March 01, 2017
85th Legislature, Number 25
The House convenes at 10 a.m.

Two bills are on the emergency calendar for second-reading consideration today:

HB 5 by Frank	Transferring certain responsibilities to DFPS from HHSC	1
HB 4 by Burkett	Changing the payment structure for kinship caregivers	9

The following House Appropriations subcommittees were scheduled to hold formal meetings on budget recommendations: Article 2 in Room E1.030 at 7:30 a.m., Articles 6, 7 and 8 in Room E1.026 at 7:30 a.m., and Articles 1, 4, and 5 in Room E2.026 at 8 a.m. The following House committees were scheduled to hold public hearings: Ways and Means in Room E2.012 at 8 a.m., Higher Education in Room E2.030 at 10:30 a.m. or on adjournment and Natural Resources in Room E2.010 at 10:30 a.m. or on adjournment.

The following Senate committees were scheduled to hold public hearings: Health and Human Services in Room E1.016 at 8 a.m. and Veteran Affairs and Border Security in Room 2E.20 (Betty King Committee Room) at 1:30 p.m. or on adjournment.



Dwayne Bohac
Chairman
85(R) - 25

SUBJECT: Transferring certain responsibilities to DFPS from HHSC

COMMITTEE: Human Services — committee substitute recommended

VOTE: 9 ayes — Raymond, Frank, Keough, Klick, Miller, Minjarez, Rose, Swanson, Wu

0 nays

WITNESSES: For — Frank Rynd, Archdiocese of Galveston-Houston; John Specia; (*Registered, but did not testify*: Shannon Rosedale and Dana Springer, Catholic Charities Fort Worth; Lee Spiller, Citizens Commission on Human Rights; Judy Powell and Johana Scot, Parent Guidance Center; Linda Wolfe and Janet Woody, Stand Out Ministries; John Colyandro, Texas Conservative Coalition; Jennifer Allmon, the Texas Catholic Conference of Bishops; Clint Bedsole)

Against — (*Registered, but did not testify*: Harrison Hiner, Texas State Employees Union)

On — Hank Whitman, Department of Family and Protective Services; Will Francis, National Association of Social Workers - Texas Chapter; Kate Murphy, Texans Care for Children; Scott McCown; (*Registered, but did not testify*: Michaela Bernacchio, Children's Health System of Texas; Audrey Carmical, Lynn Blackmore, Kristene Blackstone, Lisa Kanne, Sasha Rasco, Jean Shaw, Lisa Subia, Frianita Wilson, Kezeli "Kez" Wold, Trevor Woodruff, and Ric Zimmerman, Department of Family and Protective Services; Stephanie Muth and Trey Wood, Health and Human Services Commission; Katherine Barillas, One Voice Texas)

BACKGROUND: The 84th Legislature in 2015 enacted SB 200 by Nelson, the Sunset bill for the Health and Human Services Commission (HHSC), which continued the Department of Family and Protective Services (DFPS) as an independent agency under the HHSC umbrella until 2023. As part of the consolidation of the state's health and human services system, SB 200 required certain administrative support services and regulatory functions of DFPS to transfer to HHSC by September 1, 2017. SB 200 also

discontinued the Department of Family and Protective Services Council along with other health and human services councils, and transferred its role to the HHSC Executive Council.

The state's health and human service agency directors, including the DFPS commissioner, are appointed by the HHSC executive commissioner with the approval of the governor and serve at the pleasure of the executive commissioner.

DIGEST: CSHB 5 would separate the Department of Family and Protective Services (DFPS) from the state's health and human services system and would transfer certain functions from the Health and Human Services Commission (HHSC) to DFPS. The bill also would remove classification of DFPS as a health and human services agency and would transfer certain duties from the HHSC executive commissioner to the DFPS commissioner. Under the bill, the governor would appoint the DFPS commissioner, who would serve at the pleasure of the governor.

Under CSHB 5, the DFPS commissioner would have to oversee the agency rather than assist the HHSC executive commissioner with developing policies, guidelines, and rulemaking related to DFPS' functions.

Transfer of functions and authority. CSHB 5 would transfer to DFPS any existing HHSC authority over:

- child welfare services;
- collaboration with health and human services agencies, community partners, the health care community, and federal health and social services programs to maximize medical services and benefits for child abuse and neglect victims;
- development and format of education passports for foster children;
- collaboration with the Texas Education Agency to develop policies and procedures to ensure that the needs of foster children are met in every school district;
- investigations of alleged abuse or neglect occurring at a child-care facility, including a residential child-care facility, which includes general residential operations, child-placing agencies, foster group homes, foster homes, agency foster group homes, and agency foster homes;

- maintenance of foster child health passports using DFPS' existing computer resources to the greatest extent possible rather than a combination of resources between DFPS and HHSC; and
- investigations and protective services for elderly persons and those with disabilities.

CSHB 5 also would transfer to the DFPS commissioner from the HHSC executive commissioner rulemaking authority over:

- the pre- and post-placement parts of an adoption evaluation and requirements for an adoption evaluation conducted by a licensed child-placing agency or DFPS;
- adoption assistance;
- child abuse or neglect investigations;
- scheduling of permanency planning meetings;
- child welfare services, including foster care, child and family services, children's advocacy centers, the relative and other caregiver placement program, and permanency care assistance program;
- parenting education programs;
- the Nurse-Family Partnership Competitive Grant Program;
- medical services for child abuse and neglect victims;
- advisory committees, including appointments; and
- investigations and protective services for elderly persons and those with disabilities.

Collaboration. CSHB 5 would require DFPS and HHSC to collaborate on:

- entering into contracts for the provision of shared administrative services, including payroll, procurement, information resources, rate setting, and, subject to the governor's approval, regional administrative services;
- designing the medical services delivery model for child abuse and neglect victims;
- adopting rules specifying the information required to be in a foster child's health passport; and
- providing training or instructional materials regarding use of the health passport.

Administration of managed care contracts, including Medicaid.

CSHB 5 would specify that HHSC would be responsible for administering

contracts with managed care providers to deliver medical care to children in foster care.

Investigations of child care abuse and neglect. The bill would require the DFPS commissioner to transfer to its Child Protective Services (CPS) division the responsibility for investigating reports of abuse or neglect occurring at a child-care facility, including a residential child-care facility. The DFPS commissioner would transfer investigators and staff to CPS as necessary. DFPS functions related to investigations of child-care facilities would be among those not subject to transfer to HHSC as part of the consolidation of the health and human services system. The bill would prohibit the transfer of those investigations to HHSC.

The transfer of responsibility for investigating child-care facilities for reports of abuse or neglect would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, the transfer would take effect on August 28, 2017.

Separation of DFPS from HHSC system consolidation Sunset review. The bill would remove DFPS from the state's health and human services system transition plan and would remove the agency from the 2023 limited Sunset review of the consolidation of the state's health and human services system under HHSC. The bill would transfer responsibility from HHSC and the HHSC commissioner to DFPS and the DFPS commissioner for DFPS agency and administrative functions related to child protective services, adult protective services, and prevention and early intervention services.

Family and Protective Services Council. CSHB 5 would reinstate the Family and Protective Services Council as it existed before its discontinuation in 2015 under SB 200. The council would assist the DFPS commissioner in developing rules and policies for the department.

Juvenile justice information. CSHB 5 would designate DFPS as a "juvenile service provider" agency separate from the health and human services system and would allow the agency to continue to receive juvenile justice information from the Texas Juvenile Justice Department.

Divisions within DFPS. CSHB 5 would require the DFPS commissioner to establish divisions and offices within the department, including an

investigations division, a contracting division, an office of consumer affairs, a consolidated data division, and a legal division including human resources. The contracting division would oversee quality assurance, vendors, contract adherence, and single source continuum contractors providing foster care services. The DFPS commissioner could establish additional divisions and assign department functions to the divisions.

Effective date. The bill would take effect September 1, 2017. As soon as possible after that date, the HHSC executive commissioner would transfer the appropriate divisions, resources, and personnel to DFPS to allow the department to perform its general functions.

**SUPPORTERS
SAY:**

By making DFPS an executive level agency reporting directly to the governor, CSHB 5 would allow the agency to make decisions more quickly and efficiently. In addition, making DFPS a stand-alone agency would show all Texans the state's commitment to protecting at-risk children and the value of the agency and its employees. CSHB 5 would make clear that the DFPS commissioner was directly accountable to the governor and would clarify the chain of command. This would better protect children in the care of the state by helping to eliminate delays in child welfare decisions that impact their well-being.

CSHB 5 would give an appropriate amount of power to the DFPS commissioner, equal to the power entrusted to the HHSC executive commissioner. Under the bill, the DFPS commissioner would have oversight from the governor and the Legislature, as well as important stakeholder input from the reinstated Family and Protective Services Council, which would allow for transparency in rulemaking. The bill would streamline management processes between HHSC and DFPS, ensuring the ability of DFPS to address its specialized needs in child welfare services. Designating DFPS as an agency separate from the HHSC system would not affect children's access to services. In fact, CSHB 5 would allow the agency to provide its services more efficiently and effectively and ensure that children had access to medical care and services through HHSC.

The Sunset review process last session specifically excluded DFPS from many of the consolidation efforts, with the understanding that DFPS' child

welfare work has important differences from the work done by the rest of HHSC. CSHB 5 would retain important connections to HHSC while giving DFPS the independence it needs to protect Texas children. The bill would maintain cost efficiencies from consolidation by instructing DFPS to contract with HHSC for certain administrative functions and by retaining Medicaid rate setting at HHSC. It also would ensure that there was consistent investigation into child abuse and neglect across the state, including foster homes and day care facilities, by grouping the abuse and neglect investigation function of child care licensing at DFPS.

The current consolidated structure of DFPS under HHSC and the executive commissioner added a layer of management that prevents DFPS from making quick decisions in times of crisis. CSHB 5 would address this, recognizing that provision of critical protective services requires the nimbleness of an independent agency. The bill would ensure that children and their families continued to receive the medical care and services they need under the existing administrative structure, while improving managerial efficiency at DFPS.

CSHB 5 would make needed changes at HHSC and DFPS to improve service delivery and manage the DFPS workforce more effectively. Instead of waiting for the next Sunset review of DFPS in 2023, the bill would make the structural changes that are needed now at no cost to the state. Caseloads and employee retention are budget matters and should be considered through the appropriations process, not through CSHB 5. While SB 200 in 2015 maintained DFPS as a separate agency and required HHSC to submit a study to the transition oversight committee in 2018 to determine whether DFPS should continue as a separate agency, even one year is too long to wait before fixing structural issues at DFPS. CPS reform is an emergency item, and the Legislature should consider this issue without delay.

CSHB 5 also would require DFPS to enter into contracts with HHSC for services, giving DFPS more power over contracts while maintaining the cost savings that come from a consolidated system. DFPS should not be solely responsible for rate setting — HHSC is uniquely situated to negotiate contracts and set rates, especially for Medicaid.

**OPPONENTS
SAY:**

Before making any structural changes to DFPS with CSHB 5, the agency should first address problems with high caseloads and employee retention. Making structural changes to the agency could distract from those important issues.

Major changes to the state's health and human services system and consolidation should be considered through the Sunset review process, not through CSHB 5. The 84th Legislature made careful changes to DFPS' structure last session, and more changes should not be made without another Sunset review.

Making DFPS a stand-alone agency could give the DFPS commissioner too much power without appropriate oversight. While CSHB 5 would result in less bureaucracy and faster decision making, bureaucracy can serve as an accountability mechanism to ensure that one person does not have complete power to make major decisions without input and oversight from other stakeholders. Although past and present DFPS commissioners have done good work, commissioners turn over frequently, and new commissioners need the structure and guidance provided by the current system. Focusing too much power in the DFPS commissioner could result in reactive decision-making that might not lead to the best outcomes for Texas children.

DFPS is already a high-profile agency that is in the news more often than HHSC or other health and human services agencies. Texans already recognize the importance of the agency, and the governor's appointment of the DFPS commissioner is not necessary to elevate the agency's standing. By unnecessarily separating DFPS from HHSC in an attempt to raise the agency's profile, CSHB 5 could affect foster children's access to health care infrastructure within HHSC. The bill does not make clear that DFPS still would have a strong enough connection to HHSC to ensure that children and their families received the medical care and services they need.

Removing DFPS' current designation as a health and human services agency risks turning DFPS into a law enforcement-focused agency occupied mainly with investigations, rather than a service agency whose main purpose is ensuring that Texas children, people with disabilities, and

senior citizens are safe and getting the services they need.

The bill should allow rather than require DFPS to contract with HHSC for certain services. Collaboration is positive in some areas but flexibility in contracting, especially in information technology, would ensure that DFPS' projects were not put on the back burner. Small nonprofits also could benefit from contracting directly with DFPS rather than going through HHSC's larger contracting system.

OTHER
OPPONENTS
SAY:

While collaboration between HHSC and DFPS is sometimes necessary, non-Medicaid rate setting is not one of these times. CSHB 5 should move the authority to set non-Medicaid rates to DFPS instead of requiring collaboration with HHSC. This would be especially important if DFPS outsourced certain functions. The agency using the services should be the one deciding what to pay for them, and DFPS knows best what it needs.

NOTES:

The committee substitute differs from the original bill in that it would require DFPS to collaborate with HHSC in designing the medical services delivery model for child abuse and neglect victims, developing and providing a health passport for each foster child, providing training or instructional materials on the passport, and adopting rules specifying the information in the passport. The substitute would require HHSC to be responsible for administering contracts with managed care providers for the provision of medical care to children in foster care and would reinstate the Family and Protective Services Council at DFPS.

The substitute also differs from the original in that it would require the DFPS commissioner to adopt rules and policies for the operation of and the provision of services at DFPS. The substitute would specify that the creation of the legal division at DFPS would include a human resources function specifically as necessary to manage the department's workforce and establish the department's hiring and termination policies.

The substitute would require rather than allow DFPS to enter into contracts with HHSC for the provision of shared administrative services, including payroll, procurement, information resources, rate setting, and, subject to the approval of the governor, regional administrative services.

SUBJECT: Changing the payment structure for kinship caregivers

COMMITTEE: Human Services — favorable, without amendment

VOTE: 9 ayes — Raymond, Frank, Keough, Klick, Miller, Minjarez, Rose, Swanson, Wu

0 nays

WITNESSES: For — Dana Springer, Catholic Charities Fort Worth; Rachel Cooper, Center for Public Policy Priorities; Lee Spiller, Citizens Commission on Human Rights; Katherine Barillas, One Voice Texas; Johana Scot, Parent Guidance Center; Linda Wolfe and Janet Woody, Standout Ministries; Kate Murphy, Texans Care for Children; Kathryn Freeman, Texas Baptist Christian Life Commission; Sarah Crockett, Texas CASA; Madeline McClure, TexProtects, Texas Association for the Protection of Children, and Prevent Child Abuse Texas; Mercedes Bristol; Leeleeya Chavez; John Specia; (*Registered, but did not testify*: Shannon Rosedale, Catholic Charities Fort Worth; Michaela Bernacchio, Children's Health; Stacy Wilson, Children's Hospital Association of Texas; Will Francis, National Association of Social Workers - Texas Chapter; Judy Powell, Parent Guidance Center; Joshua Houston, Texas Impact; Jennifer Allmon, Texas Catholic Conference of Bishops; Katie Olse, TX Alliance of Child and Family Services; James Thurston, United Ways of Texas; Knox Kimberly, Upbring)

Against — None

On — Hank Whitman, Department of Family and Protective Services; (*Registered, but did not testify*: Lynn Blackmore, Kristene Blackstone, Audrey Carmical, Lisa Kanne, Lisa Subia, and Trevor Woodruff, Department of Family and Protective Services)

BACKGROUND: Family Code, sec. 264.755 requires the Department of Family and Protective Services (DFPS), if funds are available, to provide financial assistance and other support services to kinship caregivers based on a family's need. The financial assistance must include a one-time payment

of up to \$1,000 for the initial placement of a child. The payment for placement of a sibling group must be at least \$1,000 for the group, but may not be more than \$1,000 for each child in the group. Assistance also may include reimbursement of certain other expenses, as determined by rule, of no more than \$500 per year for each child.

Under DFPS rules (40 Texas Administrative Code, part 19, ch. 700, subch. J, div. 1, §700.1011), a caregiver qualifies for the annual reimbursement if the caregiver's income is 300 percent or less of the federal poverty level and if the child is in the caregiver's care at the time an expense is incurred.

The federal poverty level is a guideline calculated using information from the U.S. Census Bureau and Consumer Price Index. In 2017, the federal poverty level is \$12,060 for an individual, \$16,240 for a two-person household, and \$20,420 for a three-person household.

DIGEST: HB 4 would establish requirements for DFPS to disburse cash payments based on income level to kinship caregivers in the relative and other designated caregiver program.

A caregiver with a family income less than or equal to 300 percent of the federal poverty level (FPL) could receive monetary assistance of up to 50 percent of the daily basic foster care rate for a child. DFPS would have to disburse the monetary assistance to a kinship caregiver in the same way it disburses payments to a foster parent.

A caregiver with a family income greater than 300 percent but no more than 500 percent of the FPL could receive a one-time payment of up to \$1,000 for the initial placement of each child with the caregiver. Payment for placement of a sibling group would have to be at least \$1,000 for the group but could not be more than \$1,000 for each child in the group. A caregiver within this income bracket could receive an annual \$500 maximum reimbursement for certain expenses for each child.

A caregiver with a family income greater than 500 percent of the FPL could not receive monetary assistance.

The bill would establish a criminal offense and civil penalty for those who intentionally deceived DFPS by knowingly making or causing to be made false statements that would allow them to enter into a caregiver assistance agreement. A first-time offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000). A subsequent offense would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). A person who engaged in fraudulent activity would be liable to the state for a civil penalty of \$1,000.

The executive commissioner of the Health and Human Services Commission could adopt rules to determine whether fraudulent activity in a caregiver assistance agreement had occurred.

The bill would take effect September 1, 2017, and would apply to a caregiver assistance agreement entered into before, on, or after that date.

If a caregiver with a family income of 300 percent or less of the FPL received monetary assistance on or after June 1, 2017, but before September 1, 2017, DFPS would have to consider those payments as a credit against the disbursement of assistance funds. The department would have to offset the credit before disbursing cash payments under the bill.

**SUPPORTERS
SAY:**

HB 4 would enhance the financial ability of kinship caregivers to care for children placed in their homes. Empowering kinship caregivers with the financial tools and resources necessary to look after a child would save the state money in the long run because the cost of a child's average stay in kinship care would be considerably less than a child's average stay in non-relative foster care.

Not only would HB 4 be a worthy investment of taxpayer dollars, it also would allow children to remain under the loving care of their relatives. Children in kinship care experience better outcomes, such as more stability, fewer placement changes, and fewer behavioral issues than children placed in non-relative care. Children in kinship care also have a better chance of exiting DFPS custody, such as through family reunification.

Ensuring the welfare of children placed with relative caregivers is paramount. By establishing a criminal penalty for entering into a fraudulent caregiver assistance agreement, HB 4 would protect vulnerable children from exploitation by relatives whose sole purpose for caregiving lies in receiving financial assistance. The penalty provisions in the bill mirror statutory language for custody cases involving child abuse and neglect.

**OPPONENTS
SAY:**

Although HB 4 would help provide adequate financial support to kinship caregivers, the bill should guarantee the monthly stipends reach families in a timely manner. The \$1,000 one-time payment may take too long to be received, and the \$500 reimbursement for expenses is made annually, beginning a year after the child was placed. Because kinship caregivers typically have less time than foster parents to prepare for placements, it is vital that the cost of beds, clothing, and school supplies be covered quickly.

Treating a fraudulent caregiver assistance agreement as a criminal offense would be too severe and could disrupt a child's placement more than a civil penalty. Most relatives want what is best for a child, and verification processes exist to deal with instances of fraud. Fear of criminal prosecution also could deter families from taking in children. Instead of creating a criminal offense, the bill should set a civil penalty to address fraudulent caregiver assistance agreements.

The federal poverty level (FPL) is based on household size and household income. To help ensure that kinship caregivers receive stipends in the appropriate amount, a child to be placed in a caregiver's home should be included in the household size before calculating the caregiver's family income as a percentage of the FPL.

**OTHER
OPPONENTS
SAY:**

While increasing financial support to kinship caregivers is commendable and necessary, HB 4 would not change a provision in current law that terminates monetary assistance and other support services to caregivers who take permanent managing conservatorship (PMC) of a child. This could exacerbate a financial incentive that could discourage kinship caregivers from pursuing permanent managing conservatorship. Instead, HB 4 should smooth the path of children to permanency by allowing

caregivers to receive post-PMC payments monthly or in a manner similar to post-adoption payments.

NOTES:

According to estimates by the Legislative Budget Board, HB 4 would have a negative impact of about \$32.5 million in general revenue related funds during fiscal 2018-19. The estimated cost could be higher or lower depending on actual placements of children.